

DOCKET NO: 282658US8X CONT

IN THE UNITED STATES PATENT & TRADEMARK OFFICE

IN RE APPLICATION OF :  
GABRIELLE NELLES, ET AL. : EXAMINER: BARTON, J.  
SERIAL NO: 10/799,257 :  
FILED: MARCH 12, 2004 : GROUP ART UNIT: 1753  
FOR: HYBRID SOLAR CELLS WITH THERMAL DEPOSITED SEMICONDUCTIVE  
OXIDE LAYER

RESPONSE TO ELECTION OF SPECIES REQUIREMENT

COMMISSIONER FOR PATENTS  
ALEXANDRIA, VIRGINIA 22313

SIR:

In response to the Election of Species Requirement mailed on August 2, 2007, Applicants provisionally elect, with traverse, phthalocyanine and derivatives thereof as a species of hole transport materials (Claims 3, 4, 25-38, and 46-48 read on this species) and a di- or monosubstitute perylene with all possible substituents (Claims 3, 4, 25-38, and 42-48 read on this species) as a species of dyes for further examination.

REMARKS

The Office has required an election of a single disclosed species of hole transport materials from those listed in Claims 31, 32, and 42-45 and a single disclosed species of dyes from those listed in Claims 35 and 48.

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and a di- or monosubstitute perylene with all possible substituents (Claims 3, 4, 25-38, and 42-48 read on this species) as a species of dyes for further examination.

Applicants make no statement regarding the patentable distinctness of the species, but note that for restriction to be proper, there must be a patentable difference between the species as claimed. MPEP §808.01(a). Applicants respectfully traverse the Election of Species Requirement on the grounds that the Office has not provided any reasons or examples to support a conclusion that the species are indeed patentably distinct. Indeed, Applicants note that all four of the cited diseases are caused by atherosclerosis (i.e., they are atherosclerotic diseases). Accordingly, Applicants respectfully submit that the restriction is improper, and Applicants' election of species is for examination purposes only.

Moreover, the MPEP in §803 states as follows:

“If the search and examination of an entire application can be made without a serious burden, the Examiner must examine it on the merits, even though it includes claims to distinct or independent inventions.”

Applicants respectfully submit that a search of all the claims would not impose a serious burden on the Office. Applicants submit that no burden can be reasonably found as the Examiner has already examined the full scope of each generic group an Office Actions were issued on the same on November 29, 2006. Therefore this Election of Species should be withdrawn.

Finally, with respect to the elected species, Applicants respectfully submit that, should the elected species be found allowable, the Office should expand its search to the non-elected species.

Accordingly, and for the reasons presented above, Applicants submit that the Office has failed to meet the burden necessary in order to sustain the Election of Species Requirement. Withdrawal of the Election of Species Requirement is respectfully requested.

Applicants respectfully submit that the above-identified application is now in condition for examination on the merits, and early notice of such action is earnestly solicited.

Respectfully submitted,

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